

2005 SESSION WRAP-UP

A Report on Child Welfare Legislation and Issues to the Child Welfare Legislative Oversight Panel

Office of Legislative Research and General Counsel

April 2005

BILLS BY THE NUMBERS

(Figure 1) During the 2005 General Session **21 child welfare bills** were introduced. Nine (43%) passed.

This year's bill total amounted to only two-thirds of the 30 bills introduced last year. Last year's high came on the heels of the Parker Jensen case and set a five-year record for legislative activity.

Except for 2004, the number of child welfare bills passed each year since 2001 has declined. During the same period, the percentage of bills passed has also declined each year, except in 2003.

Both bills recommended by the Oversight Panel, Child Protection Team Meetings (H.B. 8) and Foster Care Citizen Review Board (S.B. 17), passed.

APPROPRIATIONS

OVERALL (Figures 2 & 4) Funds appropriated to eight child welfare entities for FY06 totaled \$184 million. This was a **3.9% (\$6.8 million)** increase over pre-session FY05 totals. In addition, the Legislature approved a **\$1.3 million FY05 supplemental** to DCFS for adoption assistance. **Combined, these appropriations increased total child welfare funding by 4.6% (\$8.1 million).**

PERCENTAGE INCREASES

(Figures 2 & 4) The largest percentage increases went to **children's justice centers** (12.9%) and **juvenile courts** (6.4%). Except for the Child Protection Division within the Office of the Attorney General,

CHILD WELFARE BILLS, 2001-05

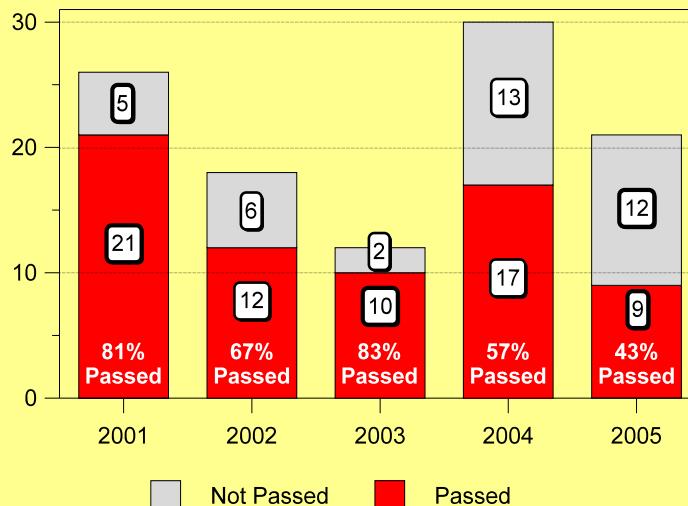


Figure 1

which received a budget *reduction* of 3.4%, all other entities and functions received increases of 2.5%–3.5%. If juvenile courts, which have a significant caseload not related to child welfare, are excluded from the figures, the FY06 total increase drops only slightly to 3.4% (\$5.0 million).

totalled 35% (\$4.1 million). The remainder of the FY06 increase was almost entirely earmarked for service delivery (\$1.8 million).

JUVENILE COURTS (Figures 2 & 4) In addition to a nearly \$800,000 increase approved in the base budget bill (H.B. 1), juvenile courts received \$245,100 to fund the addition of **one new judge** in the Second District (Weber, Davis, and Morgan Counties). Five of the six judges in the state with the highest child welfare caseloads serve in the Second District. Juvenile courts also received \$783,900 to fund **market comparability adjustments** to salaries.

All appropriations included funding for a **2.5% cost of living salary increase**.

DOLLAR INCREASES

(Figures 2 & 4) The largest portions of the additional \$6.8 million appropriated to child welfare functions in FY06 went to **DCFS** (\$4.7 million), **juvenile courts** (\$1.8 million), and **children's justice centers** (\$294,000).

DCFS (Figures 3 & 4) Nearly 60% of DCFS' FY06 increase was targeted for **adoption assistance**. In fact, adoption assistance was the only child welfare function to receive an FY05 supplemental (\$1.3 million). Combined increases for adoption assistance (FY05 supplemental + FY06)

FY06 APPROPRIATIONS INCREASES

(Sorted by percentage change from pre-session FY05 budget; dollars in thousands)

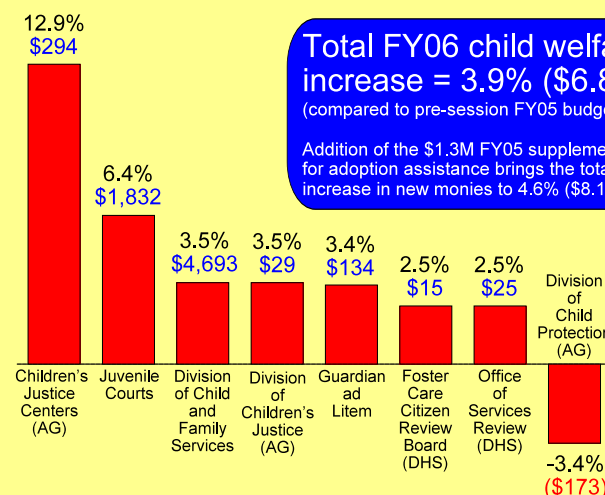


Figure 2

Total FY06 child welfare increase = 3.9% (\$6.8M)
(compared to pre-session FY05 budgets)

Addition of the \$1.3M FY05 supplemental for adoption assistance brings the total increase in new monies to 4.6% (\$8.1M).

CHILDREN'S JUSTICE CENTERS

(Figures 2 & 4) CJs received \$127,500 to open a **new center** in Iron County and \$233,800 to fund an expanded role approved by the Legislature.

GUARDIAN AD LITEM

(Figures 2 & 4) Over one-half of the GAL's 3.4% FY06 increase was provided for market comparability adjustments to salaries.

FOSTER CARE CITIZEN REVIEW

BOARDS (Figures 2 & 4) In FY04 this budget was cut by 50%. FY06 funding increased 2.5%.

ATTORNEY GENERAL

(Figures 2 & 4) The FY06 budget for the Division of Child Protection (represents DCFS) was **reduced 3.4%** (\$173,100). The FY06 budget for the Division of Children's Justice (assists in prosecution of criminal child abuse cases) was increased 3.5% (\$28,900).

IMPACT OF H.B. 213 In connection with H.B. 213, "Unused Sick Leave at Retirement Amendments," the Legislature appropriated monies for market comparability adjustments to employee salaries, including **\$1.0 million** for employees of child welfare entities. **This \$1.0 million accounted for 15% of the total FY06 child welfare funding increase but was a much more significant factor for particular entities.** Specifically, the market comparability adjustment accounted for the following portions of FY06 budget increases:

- (a) 54% of the Guardian ad Litem increase;
- (b) 43% of the Juvenile Court increase;
- (c) 31% of the Children's Justice Division (AG) increase;
- (d) 27% of the Foster Care Citizen Review Board increase; and
- (e) 3% of the DCFS increase.

MASTER STUDY RESOLUTION

The 2005 Master Study Resolution included three child welfare items:

#75 Child Welfare Code—to study evidentiary standards and whether they should be changed, and review words that are used in the code that are undefined, such as "accidental," "nonaccidental," "threatened," "harm," and "emotional harm," to determine whether they should be defined.

109 Guardian Ad Litem Audit—to study the results of the 2004-05 guardian ad litem audit, and potential revisions to the statute based on the results of the audit.

223 Guardian Ad Litem Operations—to study the full operations of the Guardian Ad Litem's Office and potential statutory changes.

GUARDIAN AD LITEM AUDIT

In February, the Legislative Auditor General released an audit of the Office of the Guardian ad Litem and recommended:

- (1) the GAL implement formal program policies and/or **practice guidelines** to address file documentation and guidance on performing statutory duties and other GAL job functions;
- (2) the GAL implement a reliable **case management system** to track case loads and provide case statistics;
- (3) the Legislature consider whether to provide **additional funding** to the Office of the Guardian ad Litem for reducing case loads (the Governor recommended increasing the GAL budget by \$260,000 to fund 3.5 FTEs and the Executive Offices and Criminal Justice Appropriations Subcommittee recommended increasing funding by \$149,000, but neither recommendation was adopted);
- (4) the Legislature review specific questions about the GAL's **statutory duties**;
- (5) the Legislature review specific questions about the GAL's **role in district court cases**;
- (6) the Legislature review the GAL **oversight structure**; and
- (7) the Judicial Council consider ways to improve GAL **oversight**.

POLICIES ENACTED

Child welfare legislation passed this year addresses numerous issues:

ABUSE & NEGLECT The statute now defines what does *not* constitute medical neglect of a child (S.B. 83).

CARETAKER RESPONSIBILITY Courts may no longer presume that a person with a minor under his or her direct and exclusive care and control at the time of abuse is responsible for the abuse. (H.B. 89)

CHILDREN'S JUSTICE CENTERS The role of CJs has been expanded to serve children who are primary victims or critical witnesses of crimes, including drug-related child endangerment. (S.B. 15) The Attorney General is required to establish a CJC in Iron County with a \$127,500

appropriation. (S.B. 93)

FOSTER CARE CITIZEN REVIEW

BOARDS Review boards are no longer required to do a review within 12 months of removal. This permits boards, responding to a 50% budget reduction made in FY04, to focus their resources on children who have been in state custody at least one year. (S.B. 17)

GUARDIAN AD LITEM In all cases where an attorney guardian ad litem is appointed by a juvenile court, the court shall make a finding that establishes the necessity of the appointment. (H.B. 338)

MEDICAL NEGLECT The code now defines what medical neglect is *not*. A parent's medical decision for a child must be shown by clear and convincing evidence to not be reasonable and informed in order to constitute neglect. Parents are entitled to a second health care opinion. Health care providers are protected from malpractice suits in cases where a parent doesn't follow the provider's recommendation. (S.B. 83)

MENTAL/BEHAVIORAL HEALTH

(VETOED) School personnel are prohibited from making a report of child abuse or neglect and the state is prohibited from taking a child into custody solely or primarily on the basis that a parent refuses to consent to the administration of a psychotropic drug to a child; a psychiatric, psychological, or behavioral treatment for a child; or a psychiatric or behavioral health evaluation of a child, unless the parent's refusal would present a serious, imminent risk to the child's safety or the safety of others. (H.B. 42)

TREATMENT PLANS Treatment plans are now called "child and family plans" and are limited to addressing findings made by the court or imposing requirements requested or consented to by the parents and agreed to by DCFS and the guardian ad litem. (S.B. 72)

PARENTS' RIGHTS Additional language has been added to the Utah Code about parents' rights. The state is required to use the least restrictive means to accomplish its interest. (H.B. 338)

PARENT TIME Parent time may be denied only under specified conditions. Parent time may not be denied solely because a parent fails to comply with the child and family plan or prove that he or she is not using legal or illegal substances. A particular parent-time session may be denied due to the condition of a parent in order to protect the child's safety or to prevent the child from being traumatized. (S.B. 72)

TEAM MEETINGS Child protection team meetings are no longer required within 24 hours of the filing of every petition. The 24 hour rule now applies only to cases where removal is likely without an expedited hearing and services. On every other petition, DCFS can wait up to 14 days to convene a team meeting. (H.B. 8)

POLICIES NOT ENACTED

Numerous changes to child welfare policy were proposed but not adopted during the 2005 General Session.

ADOPTION Proposed legislation would have permitted a parent who consents to termination of parental rights within 90 days of removal to designate which family could adopt the parent's child from a list of potential adoptive parents. The legislation would have required the adoptive parents to send information on the status and progress of the child each year to DCFS. DCFS would have been required to redact identifying information and send the response on to the child's parent. (S.B. 186)

CHILD ABUSE PREVENTION BOARD

Proposed legislation would have created the Utah Child Abuse Prevention Board to administer a new, expanded trust fund for child abuse prevention activities. (H.B. 115)

CHILD SUPPORT Proposed legislation

FY06 DCFS APPROPRIATION INCREASES

(Sorted by percentage change from pre-session FY05 budget; dollars in thousands)

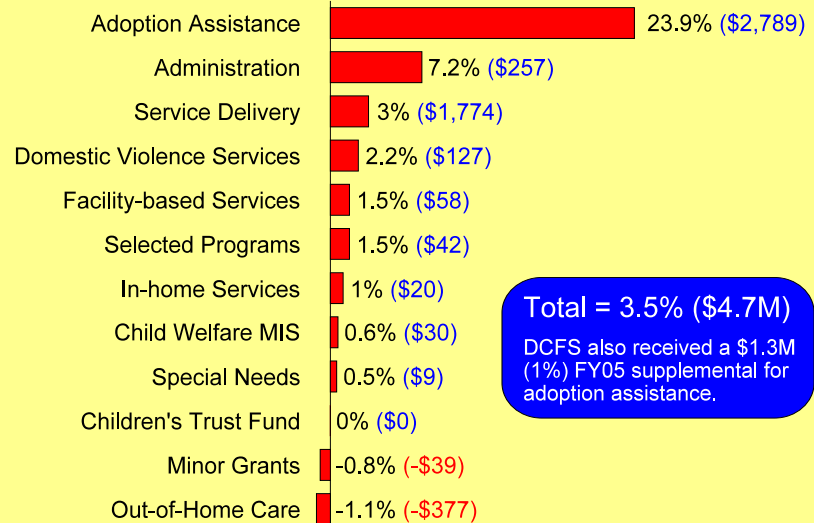


Figure 3

would have prohibited the court from ordering payment of support for a child in the custody of the state if the child was previously adopted out of state custody, unless the child was back in custody due to abuse. (SB 160)

COURT Proposed legislation would have increased the 8 month permanency hearing deadline to 12 months. (H.B. 202)

DCFS RECORDS Proposed legislation would have expanded the list of items that may be redacted from DCFS records provided to the subject of a report or the parent of a minor. Additional items would have included BCI and NCIC information, information related to psychological or psychiatric diagnosis or treatment, and information detailing discussions between

APPROPRIATIONS INCREASES/DECREASES

(Compared With Pre-Session FY05 Budgets)
(Sorted by Total Percentage Increase)

	FY05	+	FY06	=	TOTAL		FY06 APPROP.
ALL ENTITIES							
Children's Justice Centers (AG)			294,000	12.9%	294,000	12.9%	2,569,500
Juvenile Courts			1,832,300	6.4%	1,832,300	6.4%	30,440,900
Div. of Child and Family Services	\$1,300,600	1%	4,692,600	3.5%	5,993,200	4.5%	139,060,300
Div. of Children's Justice (AG)			28,900	3.5%	28,900	3.5%	862,000
Guardian ad Litem			133,700	3.4%	133,700	3.4%	4,053,900
Foster Care Review Boards (DHS)			14,600	2.5%	14,600	2.5%	597,200
Services Review (DHS)			25,300	2.5%	25,300	2.5%	1,057,700
Div. of Child Protection (AG)			(173,100)	-3.4%	(173,100)	-3.4%	4,877,300
TOTAL ALL ENTITIES	\$1,300,600	1%	\$6,848,300	3.9%	\$8,148,900	4.6%	\$183,518,800
DCFS							
Adoption Assistance	1,300,600	11%	2,789,800	23.9%	4,090,400	35.1%	14,448,900
Administration			257,100	7.2%	257,100	7.2%	3,804,800
Service Delivery			1,774,300	3.0%	1,774,300	3.0%	60,839,100
Domestic Violence Services			126,900	2.2%	126,900	2.2%	5,894,100
Facility-based Services			58,300	1.5%	58,300	1.5%	3,870,300
Selected Programs			42,200	1.5%	42,200	1.5%	2,918,700
In-home Services			20,400	1.0%	20,400	1.0%	2,069,900
Child Welfare MIS			30,400	0.6%	30,400	0.6%	4,953,700
Special Needs			8,800	0.5%	8,800	0.5%	1,856,300
Children's Trust Fund			0	0.0%	0	0.0%	400,000
Minor Grants			(39,000)	-0.8%	(39,000)	-0.8%	4,932,800
Out-of-Home Care			(376,600)	-1.1%	(376,600)	-1.1%	33,071,700
TOTAL DCFS	\$1,300,600	1%	\$4,692,600	3.5%	\$5,993,200	4.5%	\$139,060,300

Figure 4

DCFS employees and their attorneys. (H.B. 341)

DEFINITIONS Proposed legislation would have modified definitions of abuse and neglect and created a rebuttable presumption that parental discipline does not constitute abusive conduct. (H.B. 202)

EMANCIPATION Proposed legislation would have allowed a minor at least 16 years of age to petition the court for emancipation in order to live independently of his or her parents. (H.B. 77)

FAMILY ASSESSMENT Proposed legislation would have eliminated the pilot program for differentiated responses to child abuse and neglect reports. (H.B. 202)

FAMILY PRESERVATION Proposed legislation would have required DCFS to try to obtain a federal waiver to provide family preservation services. (S.B. 165)

INVESTIGATIONS Proposed legislation would have required DCFS to inform a parent, prior to interviewing a child, of the specific allegations and the time and place of the interview, and would have permitted a family member, family advocate, or minister to act as a support person during a pre-removal interview. (H.B. 202)

MEDICAL NEGLECT Proposed legislation would have limited the circumstances under which a court could order medical or mental health treatment of a child and would have limited a parent's financial responsibility for services provided while the child was in protective custody. (H.B. 202)

OUT-OF-HOME CARE Proposed legislation would have required DCFS to provide enough information to the court so that it could determine whether a noncustodial parent considered for placement associates with a gang that engages in criminal activity. (H.B. 303) Proposed legislation would have required a court to take into consideration the religious preferences of a minor and the minor's parents when placing a child in guardianship or legal custody. (H.B. 202) Proposed legislation addressing foster care placements was introduced by short title only. (H.B. 298)

PENALTIES Proposed legislation addressing mandatory minimum sentencing for child molesters was introduced by short title only. (H.B. 352)

REMOVAL OF CHILD Proposed legislation would have clarified how an abused or neglected child may be taken into the custody of the state with a warrant,

no warrant, or a petition to the court. (S.B. 112) Proposed legislation would have limited the circumstances under which a court may order that a child be placed into protective custody, expanded the information that must be provided to a parent following removal, and reduced the time that a physician may hold a child in protective custody to 36 hours. (H.B. 202)

REPORTING Proposed legislation would have modified the circumstances under which reporting of abuse or neglect is required. (H.B. 202)

REUNIFICATION SERVICES Proposed legislation would have required evidence from two, rather than one, professional indicating that a parent suffering from mental illness is incapable of utilizing reunification services. (H.B. 202)

SHELTER HEARING Proposed legislation would have required a court to honor, as nearly as practicable, a parent's request for continuation of a shelter hearing, clarified the evidence that may be presented at a shelter hearing, and clarified when a court must order a child released from protective custody. (H.B. 202)

TERMINATION OF PARENTAL RIGHTS Proposed legislation would have modified TPR provisions. (H.B. 202) Other proposed legislation addressing termination of parental rights for murder was introduced by short title only. (H.B. 278)

TRAINING Proposed legislation would have required caseworkers to be trained on specific issues, including protection of the legal rights of children, parents, and families. (H.B. 202)